IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3947 OF 2005

Om Adarsh Priyadarshini Co-op.
Hsg.Society Ltd., & Ors. ..Petitioners

Versus

The State of Maharashtra & Ors. ..Respondents.

Mr. A.Y. Sakhare for the Petitioners.
Mr. A.H.Palekar, AGP for the Respondent Nos. 1 to 3.
Mr.N.N.Bhadrashete for the Respondent No.4.

CORAM : S. A. BOBDE, J.

DATED : 05th SEPTEMBER,2005.

P.C.:

1. Rule, returnable forthwith.
Mr. Palekar, AGP for the respondents 1 to 3 and Mr. N.N.Bhadrashete for the respondent No.4, waive service of rule.
Heard by consent.

2. The dispute between the parties is that the members, who used to reside in 'C' wing of the

building in question, have succeeded in obtaining registration of a separate society; the petitioner society.

3. The first two authorities, namely, the Deputy Registrar and Divisional Joint Registrar, have permitted the bifurcation of the original society viz. Adarsh Priyadarshani Co-operative Housing Society in exercise of powers under section 18 of the Maharashtra Co-operative Societies Act, 1960; hereinafter referred to as ‘the Act’. The revisional authority has interfered with those orders. It appears that there is a resolution of the Government, which permits less than 10 members to form a new society, as required by section 6 of the Act unless there is exemption as contemplated by section 7. In the present case, the newly formed society, the registration of which is set aside, is formed by only 8 members. This is admittedly permissible if the size of the flats is upto 700 sq.ft..

4. The revisional authority has stated in its order that two flats in the newly formed society are "admeasuring about 700 sq.ft". This finding is vague. It does not give a clear picture as to whether all the

flats are 700 sq.ft or how many such flats are there in the newly formed society. Indeed, if the revisional authority had to set aside the order of the Registrar of the Co-operative Societies, it ought to have done so by recording a clear finding.

5. There is also another finding by the revisional authority that certain members of the newly formed society are defaulters. There is no observation by the revisional authority as to the extent of default and whether such defaults can come in the way of bifurcation of the society. Having regard to the circumstances, I am of view that the order of the revisional authority is liable to be set aside.

6. I must however, take note of that part of the order of the revisional authority which directs the Dy. Registrar to try for an amicable settlement of this dispute.

7. Having regard to the over all circumstances, the impugned order is set aside. The matter is remanded back to the revisional authority for a fresh decision, in accordance with law. The revisional

authority is directed to specifically give findings on :- (i) about the eligibility of the proposed new society with reference to the area of the flats in question; (ii) applicability of the G.R. dated 10th March, 1995 and compliance with any other G.R.,which may be applicable for the purpose of division/ bifurcation of a new society.

8. The revisional authority shall decide the matter as expeditiously as possible and in any case not later than three months from the date the parties appear before it. The parties are directed to appear before the revisional authority on 19th September, 2005.

9. Rule is disposed of in the above terms.

DT.05.09.05 (S.A.BOBDE,J)

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